

(Caption of Case)

Application of Duke Energy Progress, LLC for
Adjustments in Electric Rate Schedules and Tariffs
and Request for an Accounting Order

BEFORE THE
PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA

COVER SHEET

DOCKET
NUMBER: 2018 - 318 - E

(Please type or print)

Submitted by: Stephanie U. EatonSC Bar Number: 80073Address: 110 Oakwood Drive, Suite 500Telephone: 336.631.1062Winston-Salem, NC 27103Fax: 336.725.4476

Other: _____

Email: seaton@spilmanlaw.com

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DOCKETING INFORMATION (Check all that apply)

☐ Emergency Relief demanded in petition☐ Request for item to be placed on Commission's Agenda expeditiously☐ Other: _____

INDUSTRY (Check one)	NATURE OF ACTION (Check all that apply)			
<input checked="" type="checkbox"/> Electric	<input type="checkbox"/> Affidavit	<input type="checkbox"/> Letter	<input type="checkbox"/> Request	
<input type="checkbox"/> Electric/Gas	<input type="checkbox"/> Agreement	<input type="checkbox"/> Memorandum	<input type="checkbox"/> Request for Certification	
<input type="checkbox"/> Electric/Telecommunications	<input type="checkbox"/> Answer	<input type="checkbox"/> Motion	<input type="checkbox"/> Request for Investigation	
<input type="checkbox"/> Electric/Water	<input type="checkbox"/> Appellate Review	<input type="checkbox"/> Objection	<input type="checkbox"/> Resale Agreement	
<input type="checkbox"/> Electric/Water/Telecom.	<input type="checkbox"/> Application	<input type="checkbox"/> Petition	<input type="checkbox"/> Resale Amendment	
<input type="checkbox"/> Electric/Water/Sewer	<input checked="" type="checkbox"/> Brief	<input type="checkbox"/> Petition for Reconsideration	<input type="checkbox"/> Reservation Letter	
<input type="checkbox"/> Gas	<input type="checkbox"/> Certificate	<input type="checkbox"/> Petition for Rulemaking	<input type="checkbox"/> Response	
<input type="checkbox"/> Railroad	<input type="checkbox"/> Comments	<input type="checkbox"/> Petition for Rule to Show Cause	<input type="checkbox"/> Response to Discovery	
<input type="checkbox"/> Sewer	<input type="checkbox"/> Complaint	<input type="checkbox"/> Petition to Intervene	<input type="checkbox"/> Return to Petition	
<input type="checkbox"/> Telecommunications	<input type="checkbox"/> Consent Order	<input type="checkbox"/> Petition to Intervene Out of Time	<input type="checkbox"/> Stipulation	
<input type="checkbox"/> Transportation	<input type="checkbox"/> Discovery	<input type="checkbox"/> Prefiled Testimony	<input type="checkbox"/> Subpoena	
<input type="checkbox"/> Water	<input type="checkbox"/> Exhibit	<input type="checkbox"/> Promotion	<input type="checkbox"/> Tariff	
<input type="checkbox"/> Water/Sewer	<input type="checkbox"/> Expedited Consideration	<input type="checkbox"/> Proposed Order	<input type="checkbox"/> Other: _____	
<input type="checkbox"/> Administrative Matter	<input type="checkbox"/> Interconnection Agreement	<input type="checkbox"/> Protest		
<input type="checkbox"/> Other: _____	<input type="checkbox"/> Interconnection Amendment	<input type="checkbox"/> Publisher's Affidavit		
	<input type="checkbox"/> Late-Filed Exhibit	<input type="checkbox"/> Report		

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May 1, 2019

Via SCPSC E-FILING DMS

The Honorable Jocelyn G. Boyd
Chief Clerk/Administrator
Public Service Commission of South Carolina
101 Executive Center Drive
Columbia, SC 29210

**Re: Application of Duke Energy Progress, LLC for Adjustments in Electric Rate
Schedules and Tariffs and Request for an Accounting Order;
Docket No. 2018-318-E**

Dear Ms. Boyd:

Please find attached for electronic filing with the South Carolina Public Service Commission ("Commission"), the Post-Hearing Brief of Walmart Inc. ("Walmart"), in the above-referenced case. By copy of this letter, I am serving all parties of record via Electronic Mail.

Please contact us if you have any questions concerning this filing.

Sincerely,

SPILMAN THOMAS & BATTLE, PLLC

By


Stephanie U. Eaton (SC Bar No. 80073)
Carrie Harris Grundmann

Derrick Price Williamson
1100 Bent Creek Boulevard, Suite 101
Mechanicsburg, PA 17050
dwilliamson@spilmanlaw.com

Counsel to Walmart Inc.

SUE/sds
Attachments
c: Certificate of Service

BEFORE THE
PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA
DOCKET NO. 2018-318-E

IN RE: Application of Duke Energy Progress, LLC for Adjustments in Electric Rate Schedules and Tariffs and Request for an Accounting Order))))	POST HEARING BRIEF OF WALMART INC.
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Walmart Inc. ("Walmart"), by its attorneys, respectfully submits its Post-Hearing Brief in the above matter and requests that the Public Service Commission of South Carolina ("Commission") reject the 10.5 percent return on equity ("ROE") proposed by Duke Energy Progress, LLC ("DEP" or "Company") as not supported by "reliable, probative and substantial evidence"¹ as required by South Carolina law, and instead award DEP an ROE that is no higher than 9.76 percent, the average ROE awarded nationally for vertically integrated utilities from 2016 through the present.² In support of its Post-Hearing Brief, Walmart submits as follows:

FACTUAL BACKGROUND

On October 8, 2018, DEP filed Notice of its intent to file an Application for Adjustment in Electric Rate Schedules and Tariffs ("Application"). Subsequently, on November 8, 2018, DEP filed its Application seeking an increase in its electric rates of approximately \$59 million, a 10.3 percent increase in rates.³ In its Application, DEP noted that its expert witness, Robert Hevert, recommended an ROE of 10.75 percent; however, as a "rate mitigation measure," the Company

¹ S.C. Code Ann. § 58-27-870(G).

² Direct Testimony of Steve W. Chriss ("Chriss Direct"), p. 11, lines 1-6.

³ Application, p. 4, ¶ 7.

was proposing to set rates based on an ROE of 10.5 percent,⁴ which would be a 40 basis point increase over its currently authorized ROE of 10.10 percent.⁵

On November 27, 2018, Walmart filed its Petition to Intervene, which was granted via Commission Order dated December 19, 2018. On March 4, 2019, Walmart filed the Direct Testimony and Exhibits of Steve W. Chriss, Director, Energy Services for Walmart. Mr. Chriss provided in-person testimony to the Commission on Monday, April 15, 2019. Mr. Chriss' testimony provided information regarding ROEs awarded nationally since 2016.⁶ That data showed that out of the 111 reported utility rate case ROEs authorized by state regulatory commissions to investor-owned electric utilities from 2016 through approximately February 2019, the average ROE was 9.61 percent.⁷ When that data is limited to vertically integrated utilities – like DEP – the average authorized ROE since 2016 is 9.76 percent.⁸

LEGAL STANDARD

In setting the rate of return, the basis for the Commission's decision "must be documented fully in its findings of fact and based exclusively on reliable, probative, and substantial evidence on the whole record."⁹ In this case, DEP has failed to produce reliable, probative, or substantial evidence to support its current ROE of 10.10 percent, let alone an *increase* to the 10.5 percent ROE requested in this proceeding. Rather, all available evidence suggests that the appropriate ROE should be no higher than the national average ROE of 9.76 percent as set forth in Mr. Chriss' testimony.

⁴ Application, p. 13, ¶ 24; *see also* Direct Testimony of John L. Sullivan, III ("Sullivan Direct"), p. 6, line 21 to p. 7, line 1; *see also* Direct Testimony of Robert B. Hevert, p. 4, line 17 to p. 5, line 1.

⁵ Application, p. 28, ¶ 50.

⁶ Chriss Direct, p. 10, line 11 to p. 11, line 13.

⁷ *Id.*, p. 10, lines 14-17.

⁸ *Id.*, p. 11, lines 5-6.

⁹ S.C. Code Ann. § 58-5-240(H); *see also* *Porter v. S.C. Public Service Commission*, 332 S.C. 93, 98, 504 S.E.2d 320, 323 (S.C. 1998).

ARGUMENT

A. DEP's ROE Analysis is Not Reliable.

In an attempt to justify its request for an ROE of 10.50 percent in this proceeding, the Company has made clear that it is relying on the analysis of Mr. Hevert to determine the Company's market cost of equity.¹⁰ That analysis, however, is flawed and does not reflect reliable, probative, or substantial evidence needed to set a rate of return in this proceeding. Rather, when viewed in its totality, the evidence presented in this matter supports an ROE of no higher than 9.76 percent.

1. No Utility Commission has *ever* adopted Mr. Hevert's recommended ROE.

Two obvious reasons for rejecting DEP's proposed ROE came from Mr. Hevert's testimony at the hearing in this matter. First, Mr. Hevert admitted that *no utility commission has ever adopted his recommended ROE*.¹¹ Out of a sampling of 35 recent cases where Mr. Hevert served as an ROE expert on behalf of a utility, not a single utility commission adopted his recommended ROE, and an ROE within his proposed range was adopted in only two cases.¹² Indeed, the average ROE adopted in cases involving vertically integrated utilities where Mr. Hevert served as the ROE expert was 9.65 percent, *i.e.*, below the ROE of 9.76 percent proposed by Walmart in this proceeding.¹³

Second, Mr. Hevert acknowledged that there is typically a delta between the ROE he recommends and the ROE ultimately adopted.¹⁴ In litigated cases involving vertically integrated utilities that delta is, on average, 94.8 basis points. According to Mr. Hevert, this delta "is quite within the range of the difference between authorized returns and recommended returns."¹⁵ Going

¹⁰ Application, p. 13, ¶ 24.

¹¹ Hearing Transcript ("Tr."), Vol. 5-2, p. 965, lines 4-20.

¹² Hearing Exhibit ("Ex.") 46.

¹³ Hearing Ex. 47.

¹⁴ Hearing Tr., Vol. 5-2, p. 965, lines 13-16; *see also* Hearing Ex. 49.

¹⁵ Hearing Tr., Vol. 5-2, p. 965, lines 16-18.

on, Mr. Hevert testified that he found "that the extent to which a decision may have deviated from my recommendation is not at all that unusual when you look at all of the cases going back through at least 2014, and I'm quite sure it would extent further beyond that."¹⁶ In other words, it is normal for a utility commission to award an ROE nearly 100 basis points below the ROE recommended by Mr. Hevert. There has been no evidence to explain why the typical deviation between Mr. Hevert's recommended ROE and the adopted ROE would not apply here, too.

Neither DEP nor Mr. Hevert have offered any reason why this Commission should be the first utility commission to take the unusual step of adopting the ROE recommended by DEP witness Hevert. In this case, Mr. Hevert proposes an ROE of 10.75 percent, and the Company seeks a 10.50 percent ROE. If the average delta of 94.8 basis points discussed above were applied to the ROE numbers proposed by DEP in this case, then the ROE that should be adopted is in the range of 9.55 to 9.80 percent. In short, the testimony at the hearing from DEP's own witness supports an ROE of no more than 9.76 percent.

2. The record is devoid of persuasive evidence to support awarding DEP one of the highest ROEs at any time since 2016.

It is important to place the ROE requested here in context. DEP's witness believes that the appropriate ROE for DEP is 10.75 percent.¹⁷ Were the Commission to adopt the recommended ROE of 10.75 percent, it would be the second highest ROE awarded in the United States *at any time* since 2016, surpassed only by the 11.95 ROE awarded to Alaska Electric Power Company.¹⁸ Even were this Commission to accept the 10.50 percent offered by DEP as a supposed "rate mitigation measure," such an ROE would be the third highest ROE awarded since 2016, surpassed

¹⁶ *Id.*, p. 965, lines 20-25.

¹⁷ *Id.*, p. 958, lines 9-21.

¹⁸ *See* Chriss Direct at Ex. SWC-3.

only by Alaska Electric Power Company and Florida Power & Light Company.¹⁹ Even the very lowest end of Mr. Hevert's range – 10.25 percent – would constitute one of the top seven highest ROEs awarded since 2016.²⁰ DEP has produced no evidence to suggest that DEP's South Carolina operations are so unique as to justify being awarded one of the three highest ROEs at any time since 2016.

The entirety of DEP's proposed ROE range constitutes an increase from the Company's currently authorized 10.10 percent ROE.²¹ The Company has produced *no persuasive evidence* to warrant an increased ROE of any amount, let alone the range proposed by Mr. Hevert. DEP has not shown that it currently has any difficulty accessing the capital markets.²² Indeed, Company witness Sullivan admitted that the Company has had no difficulty accessing the capital markets as a result of the 9.90 percent ROE awarded to DEP in 2018 in North Carolina.²³ In light of DEP's undisputed testimony that it has had no difficulty accessing capital markets following the awarded 9.90 ROE in North Carolina, this Commission should deem that 9.90 percent to be the absolute ceiling on the ROE to be awarded in this proceeding.

3. The Virginia State Corporation Commission has expressly rejected the modeling relied upon by DEP in this matter.

To arrive at his recommended ROE, DEP's ROE witness utilizes a variety of models, including the Constant Growth Discounted Cash Flow Model ("Constant Growth DCF"), the Multi-Stage Discounted Cash Flow Model ("Multi-Stage DCF"), the Capital Asset Pricing Model ("CAPM"), and the Bond Yield Risk Premium Analysis.²⁴ DEP witness Hevert has used these same models and relied on the same analytical inputs in prior cases in other jurisdictions. In fact,

¹⁹ See *id.*

²⁰ *Id.*

²¹ Application, p. 28, ¶ 50.

²² Hearing Tr., Vol. 5-2, p. 956, lines 22-25.

²³ *Id.*, p. 957, line 21 to p. 958, line 1.

²⁴ See Hearing Tr., Vol. 5-2, p. 957, lines 22-25.

the Virginia State Corporation Commission ("Virginia SCC") has expressly criticized the very analysis that was used in this case.²⁵

For example, in the last proceeding in Virginia where Mr. Hevert testified on behalf of Virginia Electric and Power Company, *i.e.*, Dominion, the Commission stated that it "further finds that Dominion's proposed cost of equity of 10.25% to 10.75% represents neither the actual cost of equity in the marketplace nor a reasonable ROE for the Company."²⁶ With respect to witness Hevert's DCF analysis, the Virginia SCC noted that it improperly relied on "only earnings per share as the measure of long-term growth," resulting in "unreasonably high growth rates that upwardly skew results."²⁷ Notwithstanding this criticism by the Virginia SCC, witness Hevert's Multi-Stage DCF and Constant Growth DCF analyses in this case continue to rely solely on the projection on earnings per share.²⁸

The Virginia SCC likewise noted that Mr. Hevert's CAPM analysis and Bond Yield Risk Premium Analysis were both flawed due to their reliance on projected 30-year Treasury bond yields, noting that the Virginia SCC has "explicitly rejected the use of such projected interest rates in prior cases, stating that inclusion of these projected rates inflates the results of the utility's risk premium analysis."²⁹ The Virginia SCC further noted that the CAPM, like the DCF modeling, relied on "earnings per share as the measure of long-term growth to develop the risk premium component" of the analysis. Again, despite the criticisms noted by the Virginia SCC of the CAPM

²⁵ See *In re Application of Virginia Electric and Power Company For the determination of the fair rate of return on common equity to be applied to its rate adjustment clauses*, Virginia SCC Case No. PUR-2017-00038, Final Order (issued Nov. 29, 2017) ("Virginia SCC ROE Order").

²⁶ Virginia SCC ROE Order, p. 4.

²⁷ *Id.*, pp. 4-5.

²⁸ Direct Testimony of Robert B. Hevert ("Hevert Direct"), p. 21, lines 14-16 (stating that Earnings Per Share ("EPS") "represents the appropriate measure of long-term growth"); p. 29, lines 5-18 (stating that the Multi-Stage DCF Model relies on "the projected earnings per share and the expected dividend payout ratio").

²⁹ Virginia SCC ROE Order, p. 5

and Bond Yield Risk Premium Analysis, witness Hevert used the *exact same modeling* in this proceeding.³⁰

As the Virginia SCC noted, Mr. Hevert's analysis produces unreliable, upwardly biased results that should be rejected in setting the ROE. This Commission also should find that DEP has failed to produce sufficiently reliable evidence in support of either its requested ROE of 10.50 percent or its witness's ROE range of 10.25 to 11.00 percent.

4. Even were this Commission to accept Mr. Hevert's Models, they do not support DEP's requested ROE.

As noted above, DEP's ROE witness initially used four different models to arrive at his proposed ROE: the Constant Growth DCF, the Multi-Stage DCF, the CAPM, and the Bond Yield Plus Risk Premium Analysis. In his Rebuttal Testimony, Mr. Hevert added an additional model, the Empirical Capital Asset Pricing Model ("ECAPM") analysis,³¹ and updated the results in his Rebuttal Testimony.³² Mr. Hevert's own modeling results also support adoption of an ROE of 9.76 percent.

Neither the Multi-Stage DCF nor the Bond Yield Plus Risk Premium Analysis produce results anywhere in the recommended cost of equity range proposed by DEP's ROE witness or the ROE sought by DEP.³³ The Constant Growth DCF and the CAPM based on the Average Bloomberg Beta Coefficient only produce results on the low end of Mr. Hevert's range (of 10.25 to 11.00 percent), but are significantly below witness Hevert's recommended ROE of 10.75 percent

³⁰ *IN RE: Application of Duke Energy Carolinas, LLC for Adjustments in Electric Rate Schedules and Tariffs and Request for an Accounting Order*, Docket No. 2018-319-E ("DEC Rate Case"), Hearing Tr., Vol. 8, p. 1798, lines 1-15 (noting that earnings per share is an input in calculating the market risk premium of Mr. Hevert's CAPM analysis); *id.*, p. 1803, lines 4-24 (Mr. Hevert noting that his analysis does rely on projected Treasury bond yields); *see also* Hearing Tr., Vol. 5-2, p. 958, lines 22-25 (noting that Mr. Hevert performed same four analyses in the DEP and DEC Rate Cases).

³¹ Hearing Tr., Vol. 5-2, p. 949, lines 10-13.

³² *See* Rebuttal Testimony of Robert B. Hevert, p. 109.

³³ *Id.*

(or the Company's "rate mitigation measure" ROE of 10.50 percent). The *only* modeling that produces a range of results that incorporates the range proposed by Mr. Hevert are the CAPM results that rely on the Average Value Line Beta Coefficient and the ECAPM.³⁴

In contrast, a 9.76 percent ROE is within the range of Mr. Hevert's Constant Growth DCF and the CAPM models, it is only 46 basis points above Mr. Hevert's Multi-Stage DCF model and only 20 basis points below the Bond Yield Plus Risk Premium Analysis results. A 9.76 percent ROE is within Mr. Hevert's ECAPM results based on the Average Bloomberg Beta Coefficient.³⁵ Furthermore, a 9.76 percent ROE would be consistent with the average ROE for vertically integrated utilities awarded nationwide, is consistent with the average ROE awarded in cases where Mr. Hevert serves as an expert on ROE, and is further supported by all the other undisputed evidence in this case.³⁶

CONCLUSION

For all the reasons set forth above, Walmart Inc. respectfully requests that this Commission reject the 10.5 percent return on equity requested by Duke Energy Progress, LLC, and instead award Duke Energy Progress, LLC, a return on equity of no more than 9.76 percent.

³⁴ *Id.*

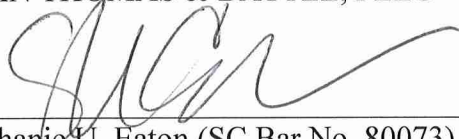
³⁵ Indeed, the only model that produces results outside the 9.76 percent is the Average Value Line Beta Coefficient.

³⁶ See Hearing Exs. 46 to 49; *see also* Hearing Tr., Vol. 5-2, p. 957, lines 21 to p. 958, line 1.

Respectfully submitted,

SPILMAN THOMAS & BATTLE, PLLC

By



Stephanie U. Eaton (SC Bar No. 80073)
Carrie H. Grundmann (admitted *pro hac vice*)
110 Oakwood Drive, Suite 500
Winston-Salem, NC 27103
Phone: (336) 631-1062
Fax: (336) 725-4476
E-mail: seaton@spilmanlaw.com
cgrundmann@spilmanlaw.com

Derrick Price Williamson
1100 Bent Creek Blvd., Suite 101
Mechanicsburg, PA 17050
Phone: (717) 795-2740
Fax: (717) 795-2743
E-mail: dwilliamson@spilmanlaw.com

Counsel to Walmart Inc.

Dated: May 1, 2019

BEFORE THE
PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA
DOCKET NO. 2018-318-E

IN RE: Application of Duke Energy Progress,)	CERTIFICATE OF SERVICE
LLC for Adjustments in Electric Rate)	
Schedules and Tariffs and Request for an)	
Accounting Order)	

I hereby certify that I have this day served one (1) copy of the foregoing document upon the following parties to this proceeding via Electronic Mail:

Heather Shirley Smith, Esquire
Duke Energy Progress, LLC
40 W. Broad Street, Suite 690
Greenville, SC 29601
heather.smith@duke-energy.com

Molly McIntosh Jagannathan, Esquire
Troutman Sanders LLP
301 South College Street, Suite 3400
Charlotte, NC 28202
molly.jagannathan@troutman.com

Rebecca J. Dulin, Esquire
Duke Energy Progress, LLC
1201 Main Street, Suite 1180
Capital Center Building
Columbia, SC 29201
rebecca.dulin@duke-energy.com

Brandon F. Marzo, Esquire
Troutman Sanders LLP
600 Peachtree Street NE, Suite 3000
Atlanta, GA 30308
Brandon.marzo@troutman.com

John T. Burnett, Esquire
Camal O. Robinson, Esquire
Duke Energy Business Services, LLC
550 South Tyron Street
Charlotte, NC 28202
john.burnett@duke-energy.com
camal.robinson@duke-energy.com

Len S. Anthony, Esquire
The Law Office of Len S. Anthony
812 Schloss Street
Wrightsville Beach, NC 28480
Len.Anthony1@gmail.com

Frank R. Ellerbe, III, Esquire
Robinson Gray Stepp & Laffitte, LLC
P.O. Box 11449
Columbia, SC 29211
fellerbe@robinsongray.com

Nanette S. Edwards, Esquire
Andrew M. Bateman, Esquire
Alexander Knowles, Esquire
Office of Regulatory Staff
1401 Main Street, Suite 900
Columbia, SC 29201
nedwards@ors.sc.gov
abateman@ors.sc.gov
aknowles@ors.sc.gov

Robert R. Smith, II, Esquire
Moore & Van Allen, PLLC
100 North Tryon Street
Suite 4700
Charlotte, SC 28202
robsmith@mvalaw.com

Garrett A. Stone, Esquire
Michael K. Lavanga, Esquire
Stone Mattheis Xenopoulos & Brew, PC
1025 Thomas Jefferson Street, NW
Eighth Floor, West Tower
Washington, DC 20007
gas@smxblaw.com
mkl@smxblaw.com

Bess J. DuRant, Esquire
Sowell & DuRant, LLC
1325 Park Street, Suite 100
Columbia, SC 29201
bdurant@sowelldurant.com

Thadeus B. Culley, Esquire
Vote Solar
1911 Ephesus Church Road
Chapel Hill, NC 27517
thad@votesolar.org

Richard L. Whitt, Esquire
Austin & Rogers, P.A.
508 Hampton Street, Suite 203
Columbia, SC 29201
RLWhitt@AustinRogersPA.com

Scott Elliott, Esquire
Elliott & Elliott, P.A.
1508 Lady Street
Columbia, SC 29201
selliott@elliottlaw.us

Robert Guild, Esquire
314 Pall Mall Street
Columbia, SC 29201
bguild@mindspring.com

Bridget Lee, Esquire
Sierra Club
9 Pine Street, Suite D
New York, NY 10005
bridget.lee@sierraclub.org

Stinson Woodward Ferguson, Esquire
Southern Environmental Law Center
463 King Street, Suite B
Charleston, SC 29403
sferguson@selcsc.org

Gudrun E. Thompson, Esquire
David L. Neal, Esquire
Southern Environmental Law Center
601 W. Rosemary Street, Suite 220
Chapel Hill, NC 27516
gthompson@selcnc.org
dneal@selcnc.org



Stephanie U. Eaton (SC Bar No. 80073)

Dated: May 1, 2019